

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FRED FELLEMAN,

Plaintiff

v.

U.S. DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS

Defendant.

CASE NO.

COMPLAINT FOR VIOLATION
OF THE FREEDOM OF
INFORMATION ACT

I. INTRODUCTION

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking disclosure and release of agency records improperly withheld from plaintiff by defendant U.S. Department of the Army, Corps of Engineers.

II. JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). The Court also has

1 jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district
2 pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

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4 III. PARTIES

5 3. Plaintiff Fred Felleman is a U.S. Citizen and resident of Seattle,
6 Washington. Mr. Felleman has a long history of involvement monitoring, writing about,
7 and educating the public and federal, state, and local decision-makers concerning activities
8 at BP's Cherry Point Refinery in Whatcom County, Washington. Mr. Felleman, as a board
9 member of Ocean Advocates was the lead plaintiff challenging the Corps' permit for BP's
10 dock expansion, which resulted in the required vessel traffic risk assessment that is at
11 issue.

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13 4. Defendant U.S. Department of the Army, Corps of Engineers ("Corps of
14 Engineers") is an Agency of the Department of Defense. The Corps of Engineers is an
15 agency within the meaning of 5 U.S.C. § 552(f).

16 IV. FACTS

17 5. On June 14, 2012, Fred Felleman submitted a request under the Freedom of
18 Information Act, 5 U.S.C. § 552 ("FOIA") to the Corps of Engineers. Mr. Felleman
19 requested documents related to BP's Cherry Point Marine Terminal dated between May 1,
20 2012, and June 14, 2012.

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22 6. On June 25, 2012, Siri C. Nelson, District Counsel for the Seattle District of
23 the Corps of Engineers responded with a partial disclosure of the documents requested.
24 The Corps of Engineers withheld twenty-two pages of documents claiming that they were
25 exempt under Exemption 5 as "pre-decisional."
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1 7. On July 2, 2012, the Corps of Engineers confirmed that two of the
2 requested, but withheld documents were identified as follows: (a) "Answers by Rene van
3 Dorp to April 12, 2012, conference call questions;" and (b) "Scope of Work Vessel Traffic
4 Risk Analysis – 2" or "BPCP-VTRA SOW draft (jhr 6-1-12)."

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6 8. The document titled "Answers by Rene van Dorp to April 12, 2012,
7 conference call questions" had been previously provided to BP's employee Scott
8 McCreery by email on May 15, 2012.

9 9. The document titled "Scope of Work Vessel Traffic Risk Analysis – 2" or
10 "BPCP-VTRA SOW draft (jhr 6-1-12)" had been previously provided to BP's employee
11 Scott McCreery by email on June 13, 2012.

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13 10. BP is not an agency.

14 11. BP is not involved in a consulting relationship with the Corps of Engineers.

15 12. On July 31, 2012, Felleman filed an administrative appeal with the General
16 Counsel for the Secretary of the Army seeking release of the two documents were withheld
17 but had been shared with BP's counsel.

18 13. On January 15, 2013, the Corps of Engineers released the document titled
19 "Answers by Rene van Dorp to April 12, 2012, conference call questions."

20 14. The Corps of Engineers has not released the draft version of the document
21 titled "Scope of Work Vessel Traffic Risk Analysis – 2" or "BPCP-VTRA SOW draft (jhr
22 6-1-12)" that had been provided to BP by email on June 13, 2012.

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24 15. The Corps of Engineers has not responded to Mr. Felleman's July 31, 2012,
25 administrative appeal.
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17. Mr. Felleman has exhausted his administrative remedies.

18. The allegations in paragraphs 1-18 are re-alleged and incorporated herein by reference.

20. The requested information will contribute substantially and meaningfully to the public's understanding of BP's application before the Corps of Engineers.

21. By failing to provide the requested documents defendant has denied Mr. Felleman his right to access this information under the Freedom of Information Act.

THEREFORE, Mr. Felleman requests the following relief:

2. An award of Mr. Felleman's costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E).

3. Such other and further relief as the Court may deem just and proper.

1 DATED this 19th day of February, 2013.

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